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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,805	12/28/2001	James Martin Kaun	KCC-16,044	6953
35844	7590	10/19/2005		
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195				
			EXAMINER	
			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/032,805	KAUN ET AL.
	Examiner Michele Kidwell	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 August 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-5,7-42,44-46 and 48-101 is/are pending in the application.  
 4a) Of the above claim(s) 73-89 and 100 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3-5,7-42,44-46,48-72,90-99 and 101 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

The applicants remarks filed August 2, 2005 with respect to the most recent election of species requirement is persuasive and the election of species requirement of July 5, 2005 is withdrawn.

This application contains claims 73 – 89 and 100 drawn to an invention nonelected with traverse in the reply filed November 8, 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 – 5, 7 – 42, 44 – 46, 48 – 72 and 90 – 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 748 894.

With reference to claims 1, 12 – 14, 26 – 42, 53 – 56, 68 – 72, 99 and 101, EP 0 748 894 (hereinafter '894) discloses an absorbent article in a variety of configurations including diapers, sanitary napkins, etc. including a liquid permeable body side liner, a containment tissue adjacent to the body side liner comprising nonwoven fibers, which

may comprise a variety of fibers, including a natural one, and at least one treated region wherein a hydrophobic agent is applied to the fiber matrix in the fiber matrix in the at least one treated region, an absorbent core adjacent the containment tissue and a substantially liquid impermeable outer cover adjacent to the absorbent core as set forth on page 2, line 8 to page 3, line 48. The treated region is a predetermined pattern as shown in the figures, and the agent (comprising a compound from the selected group) is applied as claimed. The absorbent article would inherently have the claimed visual contrast between the fiber matrix and the treated region when wetted due the difference in the composition structure. See page 3, line 56 to page 4, line 33.

The difference between '894 and the claimed invention is the provision that the containment sheet comprises an uncreped through air dried tissue or a creped Yankee dried tissue.

The examiner contends that '894 discloses the natural fiber as claimed. The manner by which the natural fiber is formed (i.e. air dried vs. Yankee) is not given patentable weight in an apparatus claim.

With reference to claims 3 – 5, 7 – 11, 15 – 25, 44 – 46, 48 – 52, 57 – 67 and 92 – 98, the examiner contends:

Claims merely setting forth physical characteristics desired in article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in future and which would impart desired characteristics; thus, expression "a liquefiable substance having a

liquefaction temperature from about 40°C. to about 300°C. and being compatible with the ingredients in the powdered detergent composition" is too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; expression also is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended.—Ex parte Slob (PO BdApp) 157 USPQ 172.

### ***Response to Arguments***

Applicant's arguments filed April 27, 2005 have been fully considered but they are not persuasive.

In response to the applicant's arguments that one of ordinary skill in the art would not be motivated to provide '894 with either an uncreped through air dried tissue or a creped Yankee dried tissue, the examiner contends that both the uncreped through air dried tissue or a creped Yankee dried tissue are tissues which have been processed in different manners, and the manner by which the tissue is processed does not result in a structurally different product and is not given patentable weight in apparatus claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michele Kidwell  
Primary Examiner  
Art Unit 3761